

Introduced by Senator La Malfa

February 15, 2011

An act *to amend Section 4706.5 of the Labor Code*, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 351, as amended, La Malfa. Workers' compensation: fatal accidents.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of employment. Existing law requires statutory death benefits to be paid to the employee's dependents, or, if there are no dependents, to the personal representative of the deceased employee, heirs, or other persons entitled to compensation, as prescribed. *Under existing law, when benefits are due to a deceased employee and the employee has no one surviving to whom the benefit should be paid, the compensation is required to be paid to the Department of Industrial Relations for reimbursement of other injury claims, as specified.*

~~This bill would state the intent of the Legislature to enact legislation relating to workers' compensation in the case of fatal on-the-job accidents.~~

This bill would prohibit the department from seeking payment of an amount owed pursuant to this provision by obtaining a lien on writ of execution relating to a judgment obtained by a member of the immediate family of the deceased employee, unless the member of the immediate

family is the employer for whom the deceased employee was working at the time of the fatal injury.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 4706.5 of the Labor Code is amended to*
2 *read:*

3 4706.5. (a) Whenever any fatal injury is suffered by an
4 employee under circumstances that would entitle the employee to
5 compensation benefits, but for his or her death, and the employee
6 does not leave surviving any person entitled to a dependency death
7 benefit, the employer shall pay a sum to the Department of
8 Industrial Relations equal to the total dependency death benefit
9 that would be payable to a surviving spouse with no dependent
10 minor children.

11 (b) When the deceased employee leaves no surviving dependent,
12 personal representative, heir, or other person entitled to the accrued
13 and unpaid compensation referred to in Section 4700, the accrued
14 and unpaid compensation shall be paid by the employer to the
15 Department of Industrial Relations.

16 (c) The payments to be made to the Department of Industrial
17 Relations, as required by subdivisions (a) and (b), shall be
18 deposited in the General Fund and shall be credited, as a
19 reimbursement, to any appropriation to the Department of Industrial
20 Relations for payment of the additional compensation for
21 subsequent injury provided in Article 5 (commencing with Section
22 4751), in the fiscal year in which the Controller's receipt is issued.

23 (d) The payments to be made to the Department of Industrial
24 Relations, as required by subdivision (a), shall be paid to the
25 department in a lump sum in the manner provided in subdivision
26 (b) of Section 5101.

27 (e) The Department of Industrial Relations shall keep a record
28 of all payments due the state under this section, and shall take any
29 steps as may be necessary to collect those amounts.

30 (f) Each employer, or the employer's insurance carrier, shall
31 notify the administrative director, in any form as the administrative
32 director may prescribe, of each employee death, except when the

1 employer has actual knowledge or notice that the deceased
2 employee left a surviving dependent.

3 (g) When, after a reasonable search, the employer concludes
4 that the deceased employee left no one surviving who is entitled
5 to a dependency death benefit, and concludes that the death was
6 under circumstances that would entitle the employee to
7 compensation benefits, the employer may voluntarily make the
8 payment referred to in subdivision (a). Payments so made shall be
9 construed as payments made pursuant to an appeals board findings
10 and award. Thereafter, if the appeals board finds that the deceased
11 employee did in fact leave a person surviving who is entitled to a
12 dependency death benefit, upon that finding, all payments referred
13 to in subdivision (a) that have been made shall be forthwith
14 returned to the employer, or if insured, to the employer's workers'
15 compensation carrier that indemnified the employer for the loss.

16 (h) *When a payment is owed to the Department of Industrial*
17 *Relations pursuant to subdivision (a) or (b), the department may*
18 *not seek payment of the amount by obtaining a lien or writ of*
19 *execution relating to a judgment obtained by a member of the*
20 *immediate family of the deceased employee, unless the member of*
21 *the immediate family is the employer for whom the deceased*
22 *employee was working at the time of the fatal injury.*

23 ~~(h)~~
24 (i) This section does not apply where there is no surviving
25 person entitled to a dependency death benefit or accrued and unpaid
26 compensation if a death benefit is paid to any person under
27 paragraph (6) of subdivision (a) of Section 4702.

28 ~~SECTION 1. It is the intent of the Legislature to enact~~
29 ~~legislation relating to workers' compensation in the case of fatal~~
30 ~~on-the-job accidents.~~